FILE COPY

MAY 11 1931

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 979

CHICAGO & EASTERN ILLINOIS R. R. CO.,
PETITIONER,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS. AND
JOE THOMAS, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO BE ADDRESSED TO THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, AND BRIEF IN SUPPORT THEREOF.

EDWARD W. RAWLINS,
Counsel for Petitioner.

T. P. LITTLEPAGE,
Of Counsel.

(35,881)

INDEX.

Subject Index.

	Page
Statement	1
Facts	2
Proceedings before industrial commission and courts of the State of Illinois	5
Questions involved: Whether the right of action, if any, of a railroad employee who was injured while operating or caring for a coal chute and motor connected therewith, which are regularly and constantly used for coaling engines used indiscriminately in interstate and intrastate commerce, is governed by the Federal Employers' Liability Act or by the Workmen's Compensation Act of the State wherein the injury occurred	6
Reasons for granting writ of certiorari	7
Prayer	8

Table of Cases and Statutes Cited.

Cases Cited.

American Railway Express Co. v. Levee, 263 U. S., 19	2
Erie R. Co. v. Collins, 253 U. S., 77	5, 7, 9, 10
Erie R. Co. v. Collins, 259 Fed., 172	9
Erie R. Co. v. Szary, 253 U. S., 86	7, 9
Erie R. Co. v. Winfield, 244 U. S., 170	4, 7, 9
New York Central R. Co. v. Winfield, 244 U. S., 147	7, 9
So. Pac. Co. v. Industrial Accident Commission, 251 U. S., 259	7, 9
Toledo, St. Louis & Western R. Co. v. Slavin, 236 U. S., 454	9
Western Union Telegraph Co. v. Crovo, 220 U. S., 364	2

Statutes Involved.

Workmen's Compensation Act of the State of Illinois (Smith-Hurd Illinois Revised Statutes, 1929, Chap. 48, Sec. 19 (*f*) (2), pp. 1423, 1430)	6
Federal Employers' Liability Act (Mason's United States Code, 1926, Vol. 3, page 3064).	

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 959

CHICAGO & EASTERN ILLINOIS R. R. CO.,
PETITIONER,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS AND JOE THOMAS, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO BE ADDRESSED TO THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Chicago & Eastern Illinois R. R. Co., prays for a writ of certiorari to review the order and judgment of the Circuit Court of Cook County, Illinois, entered December 31, 1930 (R. 73), confirming an award of the Industrial Commission of Illinois

in favor of the respondent, Joe Thomas, and against the petitioner in the above-entitled cause, on account of personal injuries sustained by said Joe Thomas while in the employ of petitioner.

Application was made by petitioner to the Supreme Court of Illinois to review said order and judgment of the Circuit Court of Cook County, Illinois, on writ of error (discretionary with the Supreme Court of Illinois), which application was denied by the Supreme Court of Illinois February 18, 1931 (R. 74), thus rendering said order and judgment of the Circuit Court of Cook County final and making said Court the highest Court in the State of Illinois in which a decision could be had. (*Western Union Telegraph Co. v. Crovo*; 220 U. S., 364; 55 Law Ed., 498; *American Railway Express Co. v. Levee*, 263 U. S. 19; 68 Law Ed., 140.)

Facts.

Petitioner is an interstate railroad, with its lines extending into the States of Indiana, Illinois and Missouri (R. 44). On July 15, 1929, the date of the happening of the injuries in question to respondent, he was in the employ of petitioner in the terminal switch-yard at Chicago Heights, Illinois (R. 13, 37, 56), his duties consisting of caring for and operating a coal-chute and electric motor used in connection therewith, and taking care of a round-house and cinder-pit in said yard (R. 20, 21, 38, 59). It was his regular daily duty to keep said coal-chute filled with coal (R. 20, 21, 24), which he did by hoisting same from the ground into the chute by means of the electric motor connected therewith (R. 22-23, 57), and he also frequently coaled

and watered the engines hereinafter referred to (R. 24). Said coal-chute and motor had been in operation at the same place for many years (R. 27) and were entirely separate from the round-house and located about three hundred feet distant therefrom (R. 54). On the day in question respondent, in the course of his regular duties (R. 15, 24), went to the coal-chute for the purpose of filling it with coal, and started the engine running for the purpose of hoisting coal into the chute, and while it was running attempted to grease it from underneath and got his hand caught in the gears, causing the injuries in question (R. 15, 22). Said gears were protected from above by a hood (R. 26). All of the coal which respondent hoisted into said chute was used for coaling the switch-engines which operated in and around said terminal yard (R. 23, 59). There were five engines which regularly operated in said yard and coaled at this particular chute (R. 27, 56). Four were regular switch-engines, referred to as Chicago Heights Terminal engines (R. 26, 38), and one larger engine, referred to as the C. & E. I. engine. These engines were regularly used in moving freight which was brought into and shipped out of the industries at Chicago Heights (R. 23), which surrounded said terminal yard; and the undisputed evidence shows that seventy-five per cent of said freight was interstate freight (R. 43), and all of the freight which passed through said yard was handled by said engines, which worked every day (R. 27).

There were sixty-five industries which were served by said engines and from said terminal yard (R. 40),

2z

which said yard connected with a number of railroads, viz., Chicago, Milwaukee & St. Paul, Michigan, B. & O. C. T., and C. & E. I. (R. 39), and the switch-engines above referred to would regularly take the freight which was brought into Chicago Heights by said railroads and deliver same to the various industries, and in turn switch manufactured goods from said industries back to said connecting lines (R. 38, 39, 23). As above stated, it is undisputed that approximately seventy-five per cent of the freight handled from day to day in said terminal yard and by said engines was interstate commerce (R. 43). In short, the evidence shows that the coal-chute and motor in question which respondent was operating at the time he was injured was regularly used for the purpose of fueling said engines, which were constantly and regularly engaged indiscriminately in both intra- and interstate commerce; and the coal which was being hoisted by said respondent into said coal-chute was all used in said engines.

Petitioner contends that, under the facts in this case, respondent, at the time of the happening of the injuries in question, was engaged in work in interstate commerce, and that therefore the Circuit Court of Cook County, Illinois, erred in not holding that the Industrial Commission of Illinois was without jurisdiction of the case, because respondent's right of action, if any, is governed by the Federal Employers' Liability Act and not by the Workmen's Compensation Act of Illinois. (See *Erie R. R. Co. v. Winfield*, 244 U. S., 170; 61 Law Ed., 1057.)

Proceedings Before the Industrial Commission and Courts of the State of Illinois.

This action was commenced by respondent by the filing of an application for adjustment of claim with the Industrial Commission of Illinois on January 18, 1930 (R. 7), under which he sought to recover compensation in accordance with the Workmen's Compensation Act of Illinois on account of said injuries. Hearing was had before an Arbitrator appointed by said Commission, and upon said hearing it was stipulated that one of the questions involved was the question as to whether, at the time of the injuries to respondent, petitioner and respondent were operating under the provisions of the Workmen's Compensation Act of Illinois or the Federal Employers' Liability Act (R. 12-13).

The Arbitrator rendered a decision March 6, 1930 (R. 62-63), dismissing the case for want of jurisdiction, said decision being based on the theory that, at the time of the happening of the accident, respondent was engaged in work in interstate commerce, and, therefore, the Industrial Commission of Illinois was without jurisdiction. In rendering said decision the Arbitrator cited and followed the decision of this Court in *Erie R. Co. v. Collins*, 253 U. S. 77 (R. 63), which case we beg to suggest is, we think, conclusive as to the question presented.

On March 18, 1930 (R. 65), respondent filed petition for a review of the award of the Arbitrator with the Industrial Commission, and on July 8, 1930, said Commission reversed said decision of the Arbitrator

and awarded compensation to the respondent in an amount aggregating $2,184.64 (R. 69). Petitioner sued a writ of certiorari out of the Circuit Court of Cook County, Illinois, on July 28, 1930 (R. 1), to review said award of the Industrial Commission, and, as above stated, the Circuit Court confirmed said award on December 31, 1930 (R. 73).

Under the statutes of Illinois the only method by which judgments or orders of the Circuit Court in such cases can be reviewed is upon writ of error to the Supreme Court (Smith-Hurd Illinois Revised Statutes, 1929, Chap. 48, Sec. 19 (*f*) (2), pp. 1423, 1430). Said section is, in part, as follows:

> "Judgments or orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon a writ of error which the Supreme Court in its discretion may order to issue. * * *"

In accordance with the provisions of said statutes, petitioner filed a petition for writ of error in the Supreme Court of Illinois, which petition said Court denied on February 8, 1931 (R. 74).

Question Involved.

The question presented is whether the right of action, if any, of a railroad employee who was injured while operating or caring for a coal-chute and motor connected therewith, which are regularly and constantly used for coaling engines used indiscriminately in interstate and intrastate commerce, is governed by the Federal Employers' Liability Act or by the Work-

men's Compensation Act of the States wherein the injury occurred.

Reasons for Granting Writ of Certiorari.

I.

The judgment and order of the Circuit Court affirming the award of the Industrial Commission is in direct conflict with the decisions of this Court, including *Erie R. R. Co. v. Collins*, 253 U. S., 77; 64 Law Ed., 790; *Erie R. R. Co. v. Szary*, 253 U. S., 86; 64 Law Ed., 791, and *Southern Pacific Company v. Industrial Accident Commission*, 251 U. S., 259; 64 Law Ed., 258, in which this Court has held, under facts to all intents and purposes similar, that the injured employee was engaged in work in interstate commerce. Said order and judgment of the Circuit Court of Cook County, Illinois, is also in conflict with the decisions of this Court in *New York Central v. Winfield*, 244 U. S. 147; 61 Law Ed., 1045, and *Erie R. R. Co. v. Winfield*, 244 U. S., 170; 61 Law Ed., 1057, in which this Court has held that where an employee is engaged indiscriminately in both intra- and interstate commerce at the time of an injury the Federal Employers' Liability Act, and not the State Compensation Act, applies.

II.

The question raised is in no sense a technical one, because if, as petitioner contends, respondent was, at the time he was injured, in work in interstate commerce, then the order and judgment of the Circuit

Court was not only erroneous, but prejudicial, to the petitioner; for under the Employers' Liability Act petitioner could urge as a defense that it was not guilty of negligence and also that the injury was the result of a risk assumed by respondent, which could not be done under the Illinois Workmen's Compensation Act.

Your petitioner therefore respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Cook County, Illinois, commanding said Court to certify and send to this Court a full and complete transcript of the record and all proceedings in said Circuit Court of Cook County, Illinois, in this cause entitled "Joe Thomas *versus* Chicago & Eastern Illinois, Gen. No. B-203, 860," to the end that this cause may be reviewed and determined by this Honorable Court, and that the said order and judgment of the Circuit Court of Cook County, Illinois, may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

CHICAGO & EASTERN ILLINOIS R. R. CO.,

By EDWARD U. RAWLINS,

Its Counsel.

T. P. LITTLEPAGE,

Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Where the work at which a railroad employee is engaged at the time of his injuries is work in interstate commerce, the employee is not entitled to compensation under the State's Workmen's Compensation Act, but his remedy, if any, is under the Federal Employers' Liability Act.

Erie R. R. Co. v. Winfield, 244 U. S. 170; 61 Law Ed., 1057.

New York Central v. Winfield, 244 U. S. 147; 61 Law Ed., 45.

Toledo, etc. & Western R. R. Co. v. Slavin, 236 U. S., 454; 59 Law Ed., 671.

So. Pac. Co. v. Industrial Accident Commission, 251 U. S., 259; 64 Law Ed., 258.

II.

An employee of a railroad company engaged in caring for or operating a coal-chute and motor connected therewith which are regularly and constantly used for the purpose of coaling engines used indiscriminately in interstate and intrastate commerce, as was respondent in the case at bar, is engaged in work in interstate commerce.

Erie R. Co. v. Collins, 253 U. S., 77; 64 Law Ed., 790.

Erie R. R. Co. v. Collins, 259 Fed., 172.

Erie R. Co. v. Szary, 253 U. S., 86; 64 Law Ed., 794.

So. Pac. Co. v. Industrial Accident Commission, 251 U. S., 259; 64 Law Ed., 258.

The case of *Erie R. Co. v. Collins*, 253 U. S., 77; 64 Law Ed., 790, *supra*, is, we think, directly in point. In that case the plaintiff, Collins, was hurt by starting a gasoline-engine which pumped water into a tank which supplied water to *both interstate and intrastate trains*. It appeared that the plaintiff was not familiar with starting the engine and it exploded by reason of the fumes of the gasoline being ignited by a lantern or fire. In that case this Court held that the plaintiff, at the time of the happening of the injury, was engaged in interstate commerce.

There is no material difference between the facts in the *Collins* case and those in the case at bar. In the *Collins* case the injured man was starting the engine for the purpose of pumping water into a tank, which water was later to be used in watering engines used both in interstate and intrastate commerce, while in the case at bar, claimant was greasing the engine which he had started running for the purpose of hoisting coal into the chute, which coal was later to be used in coaling engines engaged in both interstate and intrastate commerce.

In the course of its opinion, this Court, stated, p. 85:

> "In the Pedersen Case it was said that the questions which naturally arise: 'Was that work being done independently of the interstate commerce in which the defendant was engaged, or was it so closely connected therewith as to be a part of it?' Or, as said in *Shanks v. Delaware, L. & W. R. Co., supra*, 'was the work so closely related to it (interstate commerce) as to be practically a part of it?' The answer must be

in the affirmative. Plaintiff was assigned to duty in the signal tower and in the pump house, and it was discharged in both on interstate commerce as well as on intrastate commerce, and there was no interval between the commerces that separated the duty, and it comes, therefore, within the indicated test. It may be said, however, that this case is concerned exclusively with what was to be done, and was done, at the pump house. This may be true, but his duty there was performed and the instruments and facilities of it were kept in readiness for use and were used on both commerces as was demanded, and the test of the cases satisfied."

Respectfully submitted,

EDWARD U. RAWLINS,
Counsel for Petitioner.

T. P. LITTLEPAGE,
Of Counsel.